

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED - CLERK
U.S. DISTRICT COURT

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IN RE: CERTAIN ASSETS OF § NO. 6:02CV148
ALLEN PETTY, JR., a.k.a. AL PETTY § (Judge Ward)

U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

**MOTION TO CONVERT TEMPORARY RESTRAINING ORDER
TO A PRELIMINARY INJUNCTION**

The United States of America, by and through its United States Attorney for the Eastern District of Texas and the undersigned counsel, moves this Honorable Court to convert the Temporary Restraining Order (TRO) previously entered by the Court to a Preliminary Injunction (PI), pursuant to 21 U.S.C. § 853(e), as incorporated by 18 U.S.C. § 982(b)(1).

I.

On April 4, 2002, the Government sought temporary restraint of certain assets belonging to or under the control of Allen Petty, Jr., a.k.a. Al Petty (Petty). The undersigned counsel has been assisting the Federal Bureau of Investigation (FBI) in the investigation of a telemarketing scheme in Smith County in the Eastern District of Texas since on or about March 1, 2002. The affidavit of Special Agent James A. Hersley, attached to the Motion for the Entry of a Pre-Indictment Temporary Restraining Order and incorporated by reference therein, set forth probable cause to believe that Petty had been perpetuating a Ponzi scheme in the Eastern District of Texas, in furtherance of which he used the United States mails and interstate wires. Likewise, the affidavit set forth probable cause that Petty has conducted financial transactions designed to conceal the ownership of the proceeds of the scheme or that involved funds from the scheme in excess of \$10,000. As set forth in the motion and affidavit, the plan marketed by Petty may violate the mail fraud and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and the transfers involving the proceeds thereof may violate the federal money laundering statutes, 18 U.S.C. §§

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1956 and 1957. Thus, the United States sought to restrain the assets pending federal investigation of Petty based upon indications that the assets were forfeitable pursuant to 18 U.S.C. § 982(a)(1) and (8).

The Government's motion for entry of a TRO was granted, and the TRO was entered on April 4, 2002. The order granting the TRO set the matter for hearing at 8:30 a.m. on April 11, 2002, at the United States Courthouse in Marshall, Texas. The Government immediately sought to serve Petty and the entities affected by the TRO. Petty was served at the offices of counsel, Robert W. Lee, in Tyler, Texas, on April 5, 2002.

II.

The provisions of 21 U.S.C. § 853(e) govern this proceeding. This section provides the following with respect to preliminary injunctions:

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

21 U.S.C. §853(e)(1).

Accordingly, the United States moves the Court to convert the TRO to a PI that will be effective for ninety (90) days, pursuant to 18 U.S.C. §982(b)(1), incorporating 21 U.S.C. §853(e). In making this request, the Government re-alleges and re-asserts the probable cause of the original TRO, described in the affidavit of Special Agent James A. Hersley submitted with the Government's original Motion for the Entry of a Pre-Indictment TRO, and incorporates said affidavit as if fully set out herein.

The United States further requests that the Court hear this motion at the time set for hearing the TRO on April 11, 2002, so that the government may present evidence indicating that there is a substantial probability that the United States will prevail on the issue of forfeiture; that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and that the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered. As set forth in 21 U.S.C. § 853(e)(3), the Court may receive and consider evidence and information at this hearing that would be inadmissible under the Federal Rules of Evidence.

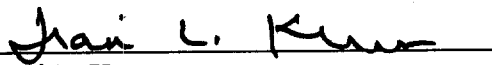
Pursuant to Fed.R.Civ.P. 65(c), the United States of America as Movant is not required to post bond or security.

III.

For the foregoing reasons, the United States respectfully requests that the current TRO be converted to a PI that will be in effect until July 10, 2002.


Respectfully Submitted,

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CERTIFICATE OF SERVICE

On this 9th day of April, 2002, I, Traci L. Kenner, Assistant United States Attorney for the Eastern District of Texas, attorney of record for the United States of America, do certify that a true and correct copy of the foregoing was mailed from Tyler, Texas to: Mr. Dale Long, Attorney at Law, P. O. Box 401, Tyler, Texas 75710, and to Mr. Robert W. Lee, Attorney at Law, 121 S. Broadway, # 668, Tyler, Texas 75702, and was sent by facsimile transmission to Mr. Long at (903) 592-8043 and to Mr. Lee at (903) 526-7436.


Traci L. Kenner